

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

Earl Allen,)	
)	
Plaintiff,)	ORDER GRANTING MOTION TO COMPEL
)	AND AWARDING COSTS
vs.)	
)	
Victory Fund Investments, L.L.C.,)	Case No. 4:06-cv-091
)	
Defendant.)	

On May 11, 2007, the plaintiff, Earl Allen (“Allen”), filed a Motion to Compel. He seeks a court order directing the defendant, Victory Fund Investments, L.L.C. (“Victory Funds”), to respond to his discovery requests.

On February 26, 2007, Allen served the following discovery requests on Victory Funds: Plaintiff’s Request for Production to Defendant (Set I) and Plaintiff’s Interrogatories to Defendant (Set I). See Plaintiff’s Motion to Compel, Exhibits 1 and 2. Rules 33(b)(3) and 34(b) of the Federal Rules provide that upon service of such requests, the opposing party has thirty days to respond. Thus, when factoring in three days for mailing, Victory Funds’s responses were due on or about April 2, 2007. The parties agreed, however, that Victory Funds would have until April 16, 2007, to respond.

On May 1, 2007, the potential discovery problem was addressed with the court during a scheduled mid-discovery conference. At that point, defendant’s counsel was hopeful of being able to respond to the discovery requests, but had not yet received the necessary information from his client.

On May 11, 2007, Allen filed a motion with the court averring that, despite his best efforts, he been unable to secure responses to his discovery requests from Victory Funds. He requests the court's assistance in the form of an order compelling Victory Funds to respond. In addition, he seeks an award of \$600.00 in costs and attorney's fees he claims to have incurred in making his motion.

Victory Funds has not filed a response or otherwise objected to the motion to compel. Under Local Rule 7.1(C), Victory Fund's silence may be deemed an admission that Allen's motion is well taken.

Based on the foregoing, Allen's Motion to Compel (Docket No. 10) is **GRANTED**. Victory Funds shall produce the requested document and answer Allen's interrogatories by June 25, 2007. In addition, the court **ORDERS** the defendant to pay the plaintiff's attorney's fees in the amount of \$300 as a sanction for not complying with discovery. Finally, the defendant is advised that failure to comply with the new deadline for discovery may result in more severe sanctions being imposed, including the entry of judgment against the defendant.

IT IS SO ORDERED.

Dated this 5th day of June, 2007.

/s/ Charles S. Miller, Jr.

Charles S. Miller, Jr.

United States Magistrate Judge